

FILE COPY

Office - Supreme Court

FILED

JUN 24 1946

CHARLES ELMORE CRY
OL

United States of America
In the
Supreme Court of the United States

OCTOBER TERM, 1946

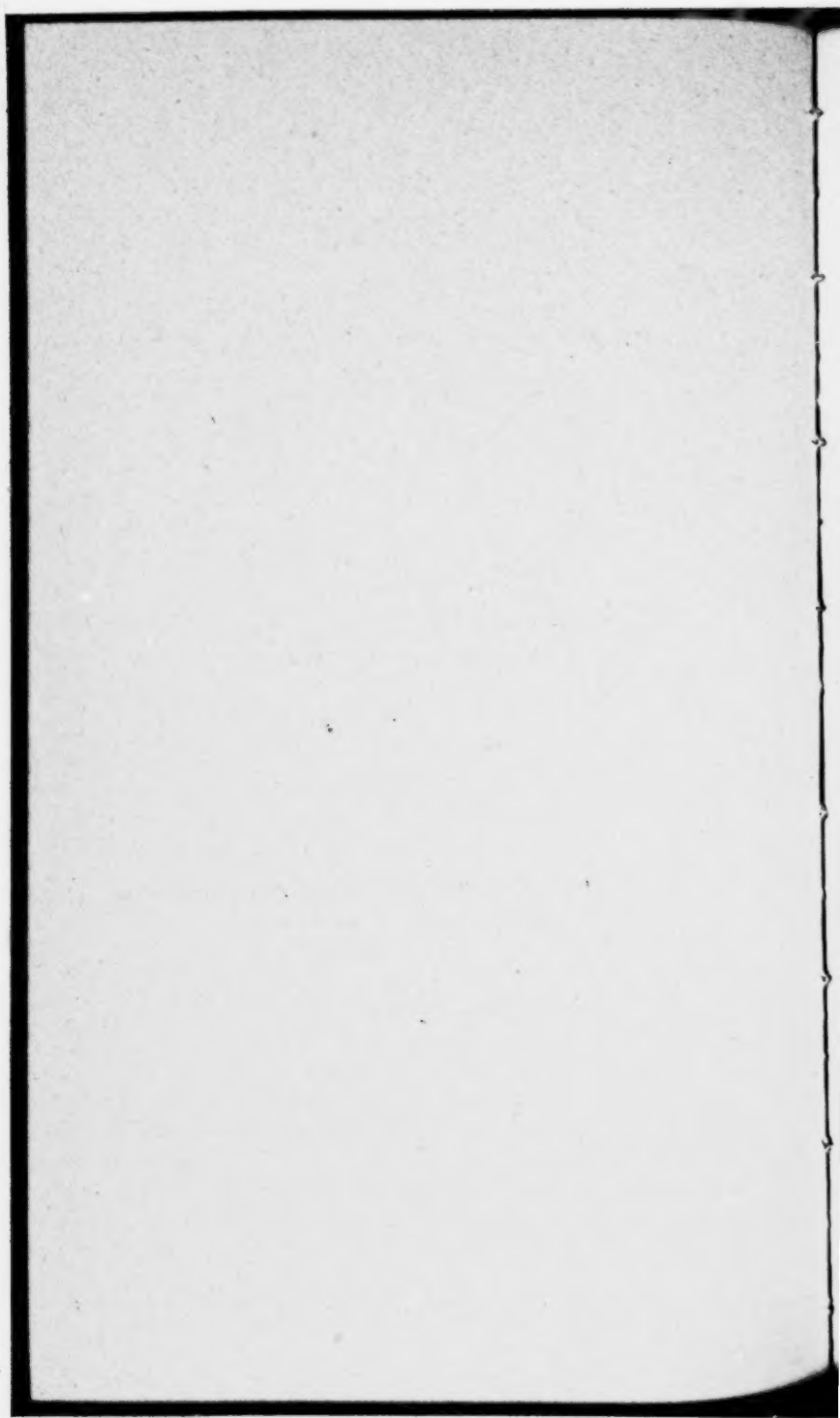
No. **230** ---

EDWIN CHARLES BEAUCHAMP,
Petitioner and Appellant,
vs.
UNITED STATES OF AMERICA,
Respondent and Appellee

PETITION FOR WRIT OF CERTIORARI
AND BRIEF IN SUPPORT
THEREOF

✓ **HENRY S. SWEENEY,**
1114-18 Buhl Building,
Detroit 26, Michigan,
Attorney for Petitioner.

DONALD B. FREDERICK,
Of Counsel.



SUBJECT INDEX

	Page
Petition for Writ of Certiorari.....	1-6
Statement of the Matter Involved.....	2-3
This Court Has Jurisdiction.....	3-5
The Question Presented.....	5
Reasons Relied Upon for Allowance of Writ....	5-6
Brief in Support of Petition for Writ of Certiorari..	7-13
The Opinion Below.....	7
Jurisdiction	8
Statement of the Case.....	8
Errors Relied Upon.....	8
Argument	9-12
The Error in the Opinion Below.....	12-13
Conclusion	13

INDEX TO AUTHORITIES CITED

Duncan v. Kahanamoku, United States Supreme Court Nos. 14 and 15, October Term 1945.....	9
Ex parte Quirin, 317 U. S. 1.....	9
In re: Yamashuto, United States Supreme Court Nos. 61 and 672, October Term 1945.....	9
Judicial Code (28 U. S. C. 347), Section 240 (a).....	8
Kurtz v. Moffitt, 115 U. S. 487.....	4, 5, 9, 10, 12
Supreme Court Rule 38 (V) (b).....	8

THE HISTORY OF THE

The first part of the history of the
 world is the history of the
 creation of the world and the
 history of the world from the
 beginning of time to the
 present time. The second part
 of the history of the world is
 the history of the world from
 the present time to the future
 time. The third part of the
 history of the world is the
 history of the world from the
 future time to the end of
 time. The fourth part of the
 history of the world is the
 history of the world from the
 end of time to the beginning
 of time. The fifth part of the
 history of the world is the
 history of the world from the
 beginning of time to the end
 of time. The sixth part of the
 history of the world is the
 history of the world from the
 end of time to the beginning
 of time. The seventh part of
 the history of the world is the
 history of the world from the
 beginning of time to the end
 of time. The eighth part of
 the history of the world is the
 history of the world from the
 end of time to the beginning
 of time. The ninth part of
 the history of the world is the
 history of the world from the
 beginning of time to the end
 of time. The tenth part of
 the history of the world is the
 history of the world from the
 end of time to the beginning
 of time.

THE HISTORY OF THE

The first part of the history of the
 world is the history of the
 creation of the world and the
 history of the world from the
 beginning of time to the
 present time. The second part
 of the history of the world is
 the history of the world from
 the present time to the future
 time. The third part of the
 history of the world is the
 history of the world from the
 future time to the end of
 time. The fourth part of the
 history of the world is the
 history of the world from the
 end of time to the beginning
 of time. The fifth part of the
 history of the world is the
 history of the world from the
 beginning of time to the end
 of time. The sixth part of the
 history of the world is the
 history of the world from the
 end of time to the beginning
 of time. The seventh part of
 the history of the world is the
 history of the world from the
 beginning of time to the end
 of time. The eighth part of
 the history of the world is the
 history of the world from the
 end of time to the beginning
 of time. The ninth part of
 the history of the world is the
 history of the world from the
 beginning of time to the end
 of time. The tenth part of
 the history of the world is the
 history of the world from the
 end of time to the beginning
 of time.

United States of America
In the
Supreme Court of the United States

OCTOBER TERM, 1946

— — —
No.....

— — —
EDWIN CHARLES BEAUCHAMP,
Petitioner and Appellant,
vs.
UNITED STATES OF AMERICA,
Respondent and Appellee

— — —
PETITION FOR WRIT OF CERTIORARI

— — —
*To the Honorable, the Chief Justice of the United States,
and the Associate Justices of the Supreme Court of
the United States:*

The petitioner, Edwin Charles Beauchamp, respectfully petitions this Honorable Court for a writ of certiorari to the United States Circuit Court of Appeals for the Sixth Circuit.

STATEMENT OF THE MATTER INVOLVED

(Unless otherwise clearly shown by context, figures in parentheses refer to pages of the printed record)

A single count indictment charged Edwin Charles Beauchamp, petitioner herein with violation of Title 18, U. S. C. A. 94. Specifically, it accused Edwin Charles Beauchamp, of aiding and assisting a deserter from the United States army. It named Alexander White (Beauchamp's former employee at the Hub Auto Parts, in Pontiac, Michigan) as the deserter, and asserted that petitioner's assistance was rendered with knowledge that the said White had deserted (1-2).

Trial without jury was had (3). Thirteen witnesses, including the soldier Alexander White testified in behalf of the government. From none of them, nor from any exhibits introduced, did it appear that the soldier, Alexander White, had ever been accused, tried, or convicted by a military tribunal, of violating any provision of the Articles of War relating to the crime of desertion.

On the contrary it did appear that Alexander White had been inducted into the United States Army on July 9th, 1942 (10). In August of 1943, he returned to the vicinity of Pontiac on furlough (10, 16, 29). He stayed at the home of a friend, Bill Marotz, who was then employed by the petitioner. Before the expiration of this furlough, this petitioner saw him; knew he became ill; knew he was taken to the United States military hospital at Selfridge Field, Michigan.

The next time the petitioner saw him was in November of 1943, when White appeared in civilian clothes; sought and obtained his old job back on the claim he had received a medical discharge from the army.

In February of 1944, Alexander White was arrested by Pontiac police officers at the telephoned request of Military

Police in Detroit (105). It appears that a circular for the apprehension of stragglers or those failing to report to a United States Army camp had issued for White in September, 1943 (104).

Petitioner testified in his own behalf. He asserted good faith in his rehiring of Alexander White in November of 1943; as a soldier who had received a medical discharge from the army (91, 93, 98). He was supported by nine other witnesses, including Stanley White, brother of Alexander; as well as the soldier Alexander White, recalled as a witness by his trial counsel.

Motions made at the conclusion of the government's case (65) and again at the termination of all the testimony (130-133) sought to note the distinction between the military crimes of desertion and being A. W. O. L.

Petitioner was adjudicated guilty by the court (4) and sentenced to serve a period of twenty (20) months imprisonment; and to pay a committed fine in the amount of One Thousand (\$1,000.00) Dollars (4).

THIS COURT HAS JURISDICTION

This case involves "an important question of Federal law, which has not been, but should be, settled by this Court." (Supreme Court rule 38 Par. 5 (b).) This court has never decided the contention first passed upon by the Circuit Court of Appeals for the Sixth Circuit. This relates to an interpretation of that portion of Title 18 U. S. C. A. 94, following the semicolon. That portion of the statute relates to criminal punishment of a civilian who knowingly aids and assists a soldier who had deserted from the United States military services.

By its ruling the Circuit Court of Appeals sustained the conduct of the District Court in holding adversely to petitioner's urging that until there had been an adjudication by the proper military tribunal, that the soldier involved was guilty of violating the Articles of War relating to desertion, the District Court was without jurisdiction to submit to the jury the issue as to a civilian's guilt.

The result of such construction requires a member of the military services to be adjudicated guilty of the crime of desertion by a civilian tribunal without anticipatory punishment. It may occasion any civilian seeking to aid a returned soldier to commit a crime of which he was unaware. It conceivably could be applied to any member of the family of a member of the armed forces who without intent, urged and condoned his failure to return to camp on time. Likewise, does it possibly preclude the long recognized distinction between the crimes of Absent Without Leave as contrasted to desertion.

The case of *Kurtz v. Moffitt*, 115 U. S. 487, though not determining the exact issue presented to the Circuit Court of Appeals for the Sixth Circuit, does disclose a line of reasoning properly applicable to the issue presented to the United States Circuit Court of Appeals for the Sixth Circuit.

No final determination of the exact question presented has been made by any other United States Circuit Court of Appeals, save in the opinion, review of which is hereby sought.

Application of the Circuit Court of Appeals for the Sixth Circuit's determination of the question presented would result in such a departure from the accepted and usual course of judicial proceedings as to prompt this Court's review thereof. It would allow a jury in the United States District Courts to determine the existence of two crimes;

the crime of the soldier (desertion), then the crime of the civilian. It would permit (as in the instant case) punishment of the civilian for a crime and so far as this record is concerned, no punishment for the soldier. It would permit a jury to determine the crime of desertion in a manner contrary to all fundamental rules of law.

THE QUESTION PRESENTED

Did the Circuit Court of Appeals for the Sixth Judicial Circuit, err in overruling petitioner's contention that until there had been an adjudication by the proper military tribunal, that the soldier involved was guilty of violating the Articles of War relating to desertion, the District Court was without jurisdiction to try the issue presented by the indictment.

REASONS RELIED UPON FOR ALLOWANCE OF WRIT

First, that portion of the act herein discussed has not heretofore been interpreted by this Honorable Court.

Second, the construction afforded by the opinion of the Circuit Court of Appeals for the Sixth Circuit, results in hazardous situations to all who may seek to aid a returning member of our military forces.

Third, the construction afforded that section of the statute is obviously contrary to Mr. Justice Gray's opinion in the cause of *Kurtz v. Moffitt*, 115 U. S. 487, in that, it is clear that the intent was, first, that a soldier had been found guilty by the proper military tribunal of being a deserter

and secondly, that the prosecution of a civilian would then be based upon his, the civilian's knowledge thereof.

Respectfully submitted,

HENRY S. SWEENEY,
1114-18 Buhl Building,
Detroit 26, Michigan,
Attorney for Petitioner.

DONALD B. FREDERICK,
Of Counsel.

United States of America
In the
Supreme Court of the United States

OCTOBER TERM, 1946

No.

EDWIN CHARLES BEAUCHAMP,
Petitioner and Appellant,
vs.
UNITED STATES OF AMERICA,
Respondent and Appellee

**BRIEF IN SUPPORT OF PETITION FOR
WRIT OF CERTIORARI**

THE OPINION BELOW

The opinion of the United States Circuit Court of Appeals for the Sixth Circuit has not been reported. The opinion is printed in full in the record (146).

JURISDICTION

The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code (28 U. S. C. 347). The Circuit Court of Appeals has, in this case, decided an important question of Federal law which has not been, but should be, settled by this Court. The Circuit Court of Appeals has, in this case, also decided a question of Federal law in a way probably in conflict with an applicable decision of this Court. The decision of the Circuit Court of Appeals so far departs from the accepted and usual course of judicial proceedings as to require (in the interest of justice) an exercise of this Court's power of supervision. (Supreme Court Rule 38 (V) (b).)

Judgment was entered in this case by the United States Circuit Court of Appeals on April 1, 1946 (145).

STATEMENT OF THE CASE

There are no controverted issues of fact. The sole question relates to the necessity of the Government presenting in support of their proof against a civilian defendant, charged with knowingly aiding and assisting a soldier who had deserted from the military services of the United States, some record or evidence that there had been a final adjudication of guilt for the crime of desertion by a proper military tribunal.

ERRORS RELIED UPON

The Circuit Court of Appeals erred in overruling petitioner's contention that until there had been an adjudication by the proper military tribunal that the soldier involved was guilty of violating the Articles of War relating to desertion, the District Court was without jurisdiction to try the issue presented by the indictment.

ARGUMENT

Among the immutable principles of our fundamental law does it appear that jurisdiction over crimes against the United States is divided into two broad classifications: those pertaining to the civilian population and those involving members of our armed forces. With equal unanimity is it recognized that no overlapping authority exists as to procedure, trial, or punishment for these separate types of crime.

Ex parte Quirin, 317 U. S. 1.

In re: Yamashuto, United States Supreme Court Numbers 61 and 672, October Term 1945.

Duncan v. Kahanamoku, United States Supreme Court Numbers 14 and 15, October Term 1945.

Kurtz v. Moffitt, 115 U. S. 487.

The Statute under which this civilian petitioner stands convicted reads as follows:

“Enticing Desertion from Army or Navy. Whoever shall entice or procure, or attempt or endeavor to entice or procure, any soldier in the military service, or any seaman or other person in the naval service of the United States, or who has been recruited for such service, to desert therefrom, or shall aid any such soldier, seaman, or other person in deserting or in attempting to desert from such service; or whoever shall harbor, conceal, protect, or assist any such soldier, seaman, or other person who may have deserted from such service, knowing him to have deserted therefrom, or shall refuse to give up and deliver such soldier, seaman, or other person on the demand of any officer authorized to receive him, shall be imprisoned not more than three years and fined not more than \$2,000.” (Criminal Code, Section 42, Title 18 U. S. C. A., Section 94.)

The conviction of this petitioner was had under that portion thereof following the semicolon, viz., that he aided and assisted Alexander White, a soldier in the military service in the United States, who had deserted from said service; as this petitioner well knew.

Upon one previous occasion did this Court have cause to take cognizance of this act.

Kurtz v. Moffitt (supra).

The situation there presented did not necessitate final determination of the exact question here raised. It there appeared that police officers of the City of San Francisco arrested Kurtz, a soldier of the United States Army, as a deserter; held him in custody for the purpose of delivery to the United States military authorities—to be tried according to the laws of the United States. A Petition for Writ of Habeas Corpus was filed by Kurtz in the local court. It was removed to the United States Court and by it remanded. Upon final hearing the California Court denied the Petition and returned Kurtz to custody.

After first affirming the Order remanding the cause to the State Court, Mr. Justice Gray, delivering the Opinion of this Court, logically reversed the State Court's final determination thereof, on the basis that a civilian does not have any right to arrest and detain a member of the United States military service, except upon express authority of the proper military officers.

The distinction between civilian and military offenses comes to us as part of our heritage from the English Common Law. It was incorporated as a part of the Bill of Rights of the American Constitution. Distinctions as to procedure, trial and punishment were equally recognized by our progenitors in their earliest legislative enactments. Such was the supporting argument of Mr. Justice Gray in the Moffitt case (pp. 498-504).

At page 502 did he have occasion to note that section of the Penal Code with which we are here concerned by stating, (it)

“* * * merely provides for the punishment of civilians, not subject to the Articles of War, who are accessories to the crime of desertion of a soldier, or who do any of the acts specified tending to promote his commission of that crime. It has no application to the crime of the soldier himself, and no tendency to show that he may be arrested by a private citizen without authority from a military officer. Indeed, the last clause above quoted has rather the opposite tendency.”

As applied to the situation with which we are confronted in the instant case, do we cite the foregoing authority for the proposition that until the Government has established that Alexander White, the soldier named therein, had been adjudicated a deserter from the United States Army, by the proper military tribunal (a Court Martial), according to the provisions of the Articles of War applicable thereto; this civilian defendant could not be found guilty of that portion of the Statute here in question relating to the crime of aiding and assisting a soldier WHO HAD DESERTED.

Our position is sustained by the recognition of certain fundamental precepts: (a) civilians are not triable in the military courts; (b) desertion from the armed forces of the United States is comparable to treason; (c) our enemies may reside within our boundaries as well as in foreign lands; and upon occasion they may claim citizenship of this Republic; (d) such evil-intended persons might effectively aid our enemies, destroy morale of members of our military services again and again without fear of prosecution or punishment; (e) with the full knowledge that no federal criminal law might effectively reach them; (f) since there are no federal offenses save those enacted by Congress.

So did Mr. Justice Gray refer to such persons as “* * * accessories to the crime of desertion by a soldier * * *.”

To make certain that these individuals did not go unpunished, should it appear that the soldier had actually deserted and been found guilty thereof by the proper military authorities, was this Statute enacted, and as Mr. Justice Gray stated, (it) “* * * merely provides for the punishment of civilians, * * *.”

THE ERROR IN THE OPINION BELOW

The Sixth Circuit Court of Appeals asserts that though they recognize the distinction between civilian and military crimes; the test of guilt or innocence under the statute here involved is that applicable to the ascertainment of guilt under any case involving a federal penal statute; hence, whether the soldier was a deserter from the military services or not, was a fact question to be decided by the jury.

The fallacy of this reasoning is that it fails to meet the syllogistic test.

At the outset do they cite *Kurtz v. Moffitt (supra)* as authority for the sole proposition that exclusive jurisdiction to ascertain and punish members of the military services of the United States for violations of the Articles of War as being vested solely in the military courts.

Truisms then set forth respecting the common law rule pertaining to accessories before the fact as contrasted with recognized federal law; the existence of no common law offenses against the United States; and the want of necessity, under a federal criminal statute to first try the principal before trying an aider and abetter; but result in the inevitably erroneous conclusions that:

The guilt of Alexander White, the soldier in this case, of violating one of the Articles of War (viz., desertion) need not be found by a military court martial.

The knowledge requisite to an ascertainment of guilt of the civilian as provided for in this statute, would permit infliction of punishment upon him for a crime of which he was unaware.

It would require a jury to first decide the commission of the military crime of desertion before determining the existence of the civilian crime of aiding and assisting a soldier who had deserted from the military services.

CONCLUSION

It is respectfully submitted that, for the reasons hereinabove stated, petitioner's petition for writ of certiorari should be allowed. It appears that the specific question presented has not heretofore been passed upon by this Honorable Court. The decision of the Circuit Court of Appeals for the Sixth Circuit, adverse to petitioner's contention relative to the construction of that portion of the statute discussed, is the only ruling upon this specific question handed down by any Circuit Court of Appeals. The decision is inimical to all who may assist returning soldiers. It determines the question presented in a manner contrary to the conclusion obviously intended by the early decision of this court which has heretofore discussed the statute. Likewise does it appear that its construction of the statute is tantamount to judicial legislation.

Respectfully submitted,

HENRY S. SWEENEY,
1114-18 Buhl Building,
Detroit 26, Michigan,
Attorney for Petitioner.

DONALD B. FREDERICK,
Of Counsel.